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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 160.

VESTA LAIDLY, APPELLANT,

vs.

C. P. HUNTINGTON, ELIZABETH HUNTINGTON, AND THE CENTRAL LAND COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FILED OCTOBER 12, 1883.

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1 Pleas before the Honorable John J. Jackson, judge of the district court of the United States for the district of West Virginia, held at Charleston August 24th, 1883, being continuation of May term, 1883.

Be it remembered that heretofore, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, November 1st, 1882.

VESTA LAIDLY *vs.* C. P. HUNTINGTON, ELIZABETH HUNTINGTON, and THE CENTRAL LAND COMPANY OF WEST VIRGINIA.	In Chancery.

This day came the defendants in this suit, by Wm. H. Hogeman, Esq., attorney; and having presented a transcript of the record thereof, including a copy of the answer of the Central Land Company of West Virginia, from the circuit court of Cabell county, West Virginia, wherein said suit was originally brought, and it appearing by said transcript that proper proceedings to remove this suit to this court were had in said circuit court, it is ordered that the
2 transcript of the record aforesaid be filed and this suit docketed in this court for further proceedings to be had therein according to law.

The transcript of the record mentioned in the foregoing order is in the words and figures following (omitting such portions as are mentioned hereinafter as being omitted), to wit:

STATE OF WEST VIRGINIA:

Pleas at a circuit court held for Cabell county, at the court-house thereof, on the 21st day of August, A. D. 1882.

VESTA LAIDLY, Plaintiff, *against* C. P. HUNTINGTON, ELIZABETH HUNTINGTON, and THE CENTRAL LAND COMPANY OF WEST VIRGINIA, Defendants.	In Chancery.

Be it remembered that heretofore, to wit, on the 20th day of December, 1881, the plaintiff, by her attorney *attorney*, sued out of the clerk's office of the circuit court of Cabell [county] a subpœna in chancery against the defendants in the above-entitled cause, which writ, with the return of the sheriff thereon endorsed, is in the words and figures following, to wit (subpœna & return omitted):

3 And at another day, to wit, at rules held in the clerk's office of said circuit court on the first Monday in January, 1881, the plaintiff, by her attorney, filed her bill and exhibits in said cause against the defendants, and a decree *nisi* was entered against the Central Land Company of West Virginia and an affidavit was filed shewing that C. P. & E. Huntington were non-residents of the State of West Virginia, and an order of publication

was awarded against them, which bill and order of publication and exhibits are in the words and figures following, to wit:

The bill of complaint of Vesta Laidly, filed in the circuit court of Cabell county against C. P. Huntington, Elizabeth Huntington, and the Central Land Company, a corporation created by and under the laws of the State of West Virginia and existing at the city of Huntington, in the county of Cabell, and in the State aforesaid.

The complainant avers that she was united in marriage with Albert Laidley on the 30th day of Oct., 1845; that he departed this life intestate on the 7 day of December, 1876, leaving the plaintiff his widow and two children heirs surviving, and without making provision for her support other than that provided by law as
4 dower out of his estate. She avers that his entire property, valued at $50,000, was used for the payment of his debts; that she realized by way of dower out of his said estate less than $3,000.00, half of which was invested in a homestead, and the other moiety is wholly inadequate for her support, and that she has no separate estate. She says that during the coverture aforesaid said Albert Laidly was seized and possessed in fee of several valuable tracts of land situate in said county, and by him sold and conveyed to the defendant, C. P. Huntington, and fully described in the exhibits filed with the bill, marked ("A,") ("B,") ("C,") ("D,") & ("E,") respectively; that on the 20th day of October, 1870, the said Albert Laidley conveyed by two deed-, bearing date the day and year last mentioned, several tracts of land to defendant, C. P. Huntington, containing in the aggregate eleven hundred and sixty acres, and for the aggregate consideration of seventy-five thousand nine hundred and eight dollars. Said deeds are of record in the county court clerk's office of Cabell county, in deed book "C," folio- 1 & 2. Certified copies from said record are herewith filed as exhibits, marked "A" and "B," respectively. That on the 25th day of July, 1870, said Albert Laidley conveyed to said C. P. Huntington, by deed bearing date the day and year last mentioned, several other
5 tracts of land containing in the aggregate eleven hundred and forty-nine acres in consideration of sixty-four thousand nine hundred and eighteen dollars. Said deed is of record in the county court clerk's office of Cabell county, in deed book "B," folio 505. A certified copy from said record thereof is filed with this bill as exhibit marked "C". Also a tract containing 240 acres conveyed to C. P. Huntington by J. M. Pennybacker, at the request of Albert Laidley, in consideration of $11,000, by deed date- Feb. 25th, 1870. A copy is here filed as Ex. "D," and which said A. Laidley bought of S. H. G. Pennybacker and J. M. Pennybacker, and by them conveyed by deed below mentioned to said Huntington, together with two other tracts containing respectively 299 and 110 acres, conveyed to C. P. Huntington by deed bearing date 13th day of April, 1870, and recorded in Cabell county court clerk's office, deed book "B," p. 445, a certified copy of which is herewith filed as Ex. "E." All of said deeds (A, B, C, & E) contain covenants of general warranty. On

the 16th day of October, 1871, the defendants, C. P. Huntington and Elizabeth Huntington, his wife, conveyed the several tracts of land aforesaid to the Central Land Company by deed bearing date the day and year aforesaid, of record in the county court clerk's
6 office of Cabell county, deed book "C," folio 252, clause 3, 4, 5, 6, a certified copy of which is here filed as part of this bill as Ex. (F); and the Central Land Company are now in the possession, use, and enjoyment of said property, or the largest portion thereof, under and by virtue of the deeds aforesaid. The plaintiff is advised that she is entitled to have one-third of the lands aforesaid in value assigned to her for her life as dower therein, with an account of the rents and profit thereof since the 7th Dec., 1876.

The defendants pretend that the plaintiff united in the execution of the deeds aforesaid, Ex's A, B, C, & E, to C. P. Huntington, and thereby extinguished her right of dower in said lands, and refuse to assign her dower in the said lands; on the contrary thereof she is informed and believes, and therefore alleges, that she never in any manner whatever barred or relinquished her right of dower in said lands, and that she did not join in the manner prescribed by statute in the execution of the deeds aforesaid, Ex's A, B, C, & E, or any of them, to C. P. Huntington, as she is advised and believes, and therefore alleges, and that the said deeds, Exhibits A, B, C, & E, were never admitted to record as to her, and that the pretended
7 certificates annexed thereto were not admitted to record. She avers that she was born on the 15th day of September, 1823, and that on the 7th day Dec. 1876, at the death of her husband, her age was 53 years, two months, 22 days, and that she is desirous to have her dower paid her in gross in money in lieu of dower in kind, to be estimated according to law upon the value of said lands at the time of said alienation; and being without remedy at law she prays that her dower may be assigned her in the said lands or in money as aforesaid, and for such other, further, and general relief as in equity she may demand, and will ever pray, &c.; &c.

VESTA LAIDLEY,
By Counsel
JOHN B. LAIDLEY, *Sol.*

STATE OF WEST VIRGINIA, }
County of Cabell, } *To wit:*

Vesta Laidley, the plaintiff named in the foregoing bill, being duly sworn, said that the facts and allegations therein contained, so far as stated on her own knowledge, are true, and so far as stated upon her information and belief she believes them to be true.

VESTA LAIDLEY.

8 Taken, sworn to, and subscribed before me in my said county this 17th day of Dec., 1881.

JNO. W. CHURCH,
Notary Public in and for Cabell Co., West Va.

Exhibit "A," referred to in plaintiff's bill, is in the words and figures following, to wit:

This deed, made this 20th day of October, 1870, between Albert Laidley and Vesta, his wife, of the first part, and C. P. Huntington, of the second part, witnesseth: That for and in consideration of the sum of forty-seven thousand and five hundred dollars, the receipt whereof is hereby acknowledged, the said parties of the first part do hereby grant and convey unto the s'd party of the second part that certain tract of land situate in Cabell county, West Virginia, containing four hundred and sixty-six acres, more or less, and described generally as follows: Beginning at a stake on the Ohio river corner formerly of John N. Buffington and John Laidley, and now of C. P. Huntington and Albert Laidley; thence southerly and with the line of s'd Huntington to the corner of s'd Huntington, Laidley, and P. C. Buffington; thence westerly with the southern line of s'd Laidley
9 tract to the line of the tract formerly owned by Wm. Buffington; thence southerly and westerly with the boundary line of the tract formerly owned by William Paine; thence with the boundary line to the line of P. C. Buffington; thence northerly with the line of s'd Buffington to the Ohio river; thence easterly and with s'd river to the beginning, saving and excepting four acres of land to be laid off in rectangular form so as to include the brick dwelling-house now occupied by Mary S. Laidley, so as not to reach within twenty feet of the river bank, and also a life estate during the life of Mary S. Laidley in ten acres, to be laid off within the field now enclosed west of the land, if the field be sufficient to make up the said quantity adjoining the said four acres, to be laid off by said Laidley within sixty days from this date, and also one half of one acre equitcteral and rectangular, including the graveyard; which s'd tract of land is fully described and defined by metes and bounds and abuttals in deed of Wm. S. Laidley and others to Albert Laidley, and C. H. Hall and others to same, and of Wm. H. How and wife to same, and the references herein made now of record in deed-book "B," pages 550 &
552, and of Cabell county, to which deeds for a specific de-
10 scription hereof reference is here made.

To have and to hold in fee and forever. And the said parties of the first part hereby covenant to warrant generally the property herein conveyed.

Witness the following signatures and seals the date above written.

ALBERT LAIDLEY. [SEAL.]
VESTA LAIDLEY. [SEAL.]

Stamp, $47.50.

STATE OF WEST VIRGINIA, }
Cabell County, } *ss:*

I, Joseph S. Miller, a notary public in and for said county, do certify that Albert Laidley and Vesta Laidley, whose names are signed to the writing above, bearing date on the 20th day of October, 1870, have acknowledged the same before me, in my county aforesaid; and the said Vesta Laidley, wife of the said Albert Laid-

ley, being by me examined privily and apart from her said husband, and having the said writing fully explained to her, acknowledged the said writing to be her act and deed, and that she had voluntarily signed the same, and declared that she does not wish to retract it.

Given under my hand this 21st day of October, 1870.

JOS. S. MILLER
Notary Public.

11 WEST VIRGINIA, }
Cabell County, } ss:

RECORDER'S OFFICE.

This deed, from Albert Laidley to C. P. Huntington, was this day presented to me, the recorder of the county and State aforesaid, together with the certificate of acknowledgment thereon endorsed. The same is admitted to record.

Given under my hand this 22d day of October, 1870.

H. J. HAYSLIP, *Recorder,*
By JNO. W. CHURCH, *Dep't.*

A true copy from the record.

Teste: M. S. THORNBURG, *Clerk C. C. C.*

Fee, $1.00.

Exhibit "B," referred to in plaintiff's bill, is in the words and figures following, to wit:

This deed, made the 20th day of October, 1870, between Albert Laidley and Vesta Laidley, his wife, of the first part, and C. P. Huntington, of the second part, witnesseth: That for and in consideration of the sum of twenty-eight thousand four hundred & eight dollars, the receipt whereof is hereby acknowledged, the s'd parties of the first part doth hereby grant and *and* convey unto the s'd
12 party of the second part two certain tracts of land situate in Cabell county, West Virginia, and bounded as follows, to wit: One tract beginning at a stake on the Ohio river corner of C. P. Huntington and Albert Laidley, formerly C. T. Everett and Jno. M. Hanly; thence southerly and with the line of C. P. Huntington to the southwestern corner of the s'd J. M. Hanly tract; thence easterly and northerly with the boundary lines of s'd tract to the Ohio river; thence westerly and with the Ohio river to the beginning, the s'd tract containing three hundred acres, more or less; the other tract, also situate in said county, adjoining the above-described tract, being bounded and described as follows, to wit: Commencing at a stake on the Ohio river in the line of P. C. Buffington and Albert Laidley, formerly Wm. P. Holderby; thence S. 5½ E. 1,173 ft. to the corner of the Marshall College lot; S. 47¾° W. 564 ft. to a stake; S. 51° 10' W. 875½ feet to the northwestern corner of s'd college lot; S. 50° 10' W. 1,343½ [feet] to a stake on the line formerly of J. H. Poage; thence with the line of said Poage S. 17¼° E. 1,355 ft. to a stake fifty feet south of the center line of the Chesapeake & Ohio R. road, as at present located; thence parallel with s'd center line of s'd road S. 77° 15' W. 1,103 ft. to a stake on the line of

the tract of land formerly owned by John M. Hanly;
13 thence northerly with the line of s'd Hanly to the Ohio river; thence easterly with the Ohio river to the beginning, containing four hundred & four acres, more or less, saving and reserving from that part of the tract formerly owned by Wm. P. Holderby a lot containing four acres and certain rights of way, fully described in his deed to Albert Laidley, of record in Cabell county as a reservation, and also from that part of the tract formerly owned by Jas. H. Poage, four acres, described in the reservations made in his deed to Albert Laidley, als- of record in Cabell county; and the said party of the first part excepts from his warranty of title a section one hundred feet in width from the south end of the Poage tract, which he only warrants specially; to have and to hold unto the s'd P. C. Buffington in fee and forever; and the s'd party of the first part covenants to warrant generally, with the exception above referred to, the property above conveyed.

Witness the following signatures and seals the date above written.

ALBERT LAIDLEY. [SEAL.]
VESTA LAIDLEY. [SEAL.]

The words on first page "one tract," and on 2d page the words "parallel/ with s'd center," and the words "and certain rights of way" were all interlined before signing.

Stamp, $28.50.

14 STATE OF WEST VIRGINIA, }
Cabell County, } *ss:*

I, Joseph S. Miller, a notary public in and for said county, do certify that Albert Laidley and Vesta Laidley, whose names are signed to the writing above, bearing date on the 20th day of October, 1870, have acknowledged the same before me in my said county, and the said Vesta Laidley, wife of said Albert Laidley, being by me examined privily and apart from her said husband, and having the writing aforesaid fully explained to her, acknowledged the same to be her act, and declared that she had voluntarily signed the same and does not wish to retract it; and I do further certify that the interlineations made in said writing were placed there before the same was signed and acknowledged by the said parties.

Given under my hand this 21st day of October, 1870.

JOS. S. MILLER,
Notary Public.

WEST VIRGINIA, }
Cabell County, } *ss:*

RECORDER'S OFFICE.

This deed, from Albert Laidley and wife to C. P. Hunting-
15 ton, was this day presented to me, the recorder of the county and State aforesaid, together with the certificate of acknowledgment thereon endorsed. The same is admitted to record.

Given under my hand this 22d day of October, 1870.

TH. J. HAYSLIP, *Recorder,*
By JNO. W. CHURCH, *Dept.*

A true copy from the record.
Teste: M. S. THORNBURG,
Clerk C. C. C.

Fee, $1.00.

Exhibit "C," referred to in plaintiff's bill, is in the words and figures following, to wit:

This deed, made and entered into this 25th day of July, 1870, between Albert Laidley and Vesta, his wife, of the first part, and C. P. Huntington, of the second part, witnesseth: That for and in consideration of the sum of sixty-four thousand nine hundred and eighteen dollars and fifty cents in hand paid — doth hereby grant and convey unto the said party of the second part three certain parcels of land situate in the county of Cabell, West Virginia, and described as follows, to wit: One, containing seven hundred acres, known as the Everett farm, and bounded on the north by the Ohio river,
16 on the west by the lands of C. P. Huntington, on the east by the lands of J. M. Hanly, on the south by the lands of F. D. K. Beuhring and others, the s'd tract being fully described in a deed from T. B. Kline, special com'r, to Albert Laidley, recorded in deed-book "B," folio 499, Cabell county, W. Va.; one other tract containing two hundred and forty-two acres, known as the Ephraim Frampton farm, and described as follows: Bounded on the north by the Ohio river, on the east by the lands of C. P. Huntington, on the west by the lands of A. Laidley, and on the south by the lands of A. Laidley, and fully described in a deed from E. M. Frampton to A. Laidley, recorded in deed-book B, folio 500, Cabell county, W. Va., excepting from the quantities in said deed a lot of one acre of land surveyed by A. Laidley to Nancy M. Frampton by deed describing the same and recorded in deed-book "B," folio 501, Cabell county, and one tract containing two hundred and seven acres and known as the Dr. McCullough lands and described as follows: Bounded on the north by the Ohio river, on the east by the lands of A. Laidley, and herein conveyed, on the west by the lands of C. P. Huntington, on the south by the lands of Laidley & Hunting-
17 ton, the same being fully described in a deed by T. B. Kline, special com'r, and P. H. McCullough and wife to A. Laidley, excepting two lots of fifty feet in width by one hundred feet in length reserved in said deed, the several tracts making in the aggregate eleven hundred and forty-nine acres, of which is excepted and reserved from this grant the lot of one acre above referred to; also the two lots of five thousand feet each above referred to; also a lot of six acres conveyed by A. Laidley and wife to F. D. K. Beuhring by deed recorded in deed-book "B," folio 503, Cabell county, W. Va., with all the privileges and appurtenances thereof, to have and to hold the above-described lands unto the s'd C. P. Huntington, his heirs, &c., in fee and forever, and the parties of the first — hereby warrant generally the property hereby conveyed.

Witness the following signatures and seals the date above written.

Stamp $65.00

ALBERT LAIDLEY. [SEAL.]
VESTA LAIDLEY. [SEAL.]

STATE OF WEST VIRGINIA, }
Cabell County, } *To wit:*

I, Joseph S. Miller, a notary [public] of said county, do cer-
18 tify that Albert Laidley and Vesta Laidley, his wife, whose names are signed to the writing above bearing date on the 25th day of July, 1870, have this day acknowledged the same before me in my said county, and the said Vesta Laidley, wife of said Albert Laidley, being examined by me privily and apart from her said husband, and having the writing aforesaid fully explained to her, she, the said Vesta Laidley, acknowledged the said writing to be her act, and declared she had willingly executed the same and does not wish to retract it.

Given under my hand this 25th day of July, 1870.

JOS. S. MILLER,
Notary Public.

WEST VIRGINIA, }
Cabell County, } *ss:*

RECORDER'S OFFICE.

This deed, from Albert Laidley and wife to C. P. Huntington, was this day presented to me, the recorder of the State and county aforesaid, together with the certificate of acknowledgement thereon endorsed. The same is admitted to record.

Given under my hand this July 25th, 1870.

THOMAS J. HAYSLIP, *Recorder,*
19 By JNO. W. CHURCH, *Dep't.*

A true copy from the record.
Teste:

M. S. THORNBURG,
Clerk C. C. C.

Fee, $1.00.

Exhibit "D," filed with *with* plaintiff's bill, is in the words and figures following, to wit:

Know all men by these presents that we, John M. Pennybacker and Sarah H. G. Pennybacker, of the county of Cabell and State of West Virginia, parties of the first part, and C. P. Huntington, of the city, county, and State of New York, of the second part, witnesseth: That the parties of the first part, in consideration of eleven thousand dollars, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey to the said C. P. Huntington, his heirs and assigns, forever, all that certain tract or parcel of land situate, lying, and being in the county of Cabell and State of West Virginia, on the Ohio river, about three miles below the mouth of the Guyandotte river, and bounded as follows, to wit: Beginning at a stake, corner of lot No. 3, in the division of the lands of Isaac Frampton, on the Ohio river, S. 19¼- east 377 poles to a stake, from which a small sycamore stands, S. 1½- east 2 poles and 3 links, N. 70¾-
20 east 1 pole and 24 links to a stake from which the above sycamore bears N. 33° W. 3 poles and seven links, and another bears 32½° E. 3 poles and 6 links; thence south 13° east 120 poles

to two white oaks, S. 30° W. 36 po. to a white oak among some rocks on a point, S. 70° W. 50 poles to a black oak and white oak on a point, S. 11½° W. 120 poles to two white oaks on a hill, S. 54° E. 62 poles to two black oaks, N. 40° E. 150 poles to a chestnut oak near top of ridge, N. 5° W. 180 poles to a white oak and two beeches, N. 21° W. 8 poles to the southeast corner of the Brown tract; thence N. 19° W. 398 poles to a stake on the Ohio river, S. 73- W. 47 poles and 14 links to the beginning, containing 240 acres, be the same more or less; subject, however, to a reservation of one acre of land at the corner of the field where the lane and the turnpike road intersect, and whereon a grocery storehouse stands, beginning at a stake on the side of the turnpike road and the west side of Beuhring's lane on my line; thence with the turnpike 210 feet to a stake; thence S. 19- E. 210 feet to a stake; thence east and parallel with turnpike 210 feet to a stake in my line; thence with said line N. 19° W. 210 feet to the beginning, the title of which land is hereby retained
21 and reserved to said S. H. G. Pennybacker as if this deed was never made; also the right to occupy the land for the present year, work the same, and apply the crop for his own use, but to allow the said Huntington to work on the same for any purpose in building and completing the Chesapeake and Ohio R. road and its appurtenances; and all the estate, title, and interest of the said John M. Pennybacker and Sarah H. G. Pennybacker, either in law or in equity, of, in, and to the said premises, together with all the privileges and appurtenances to the same belonging, and all the rents, issues, and profits thereof; to have and to hold the same to the only proper use of the said C. P. Huntington, his heirs and assigns, forever. And the said John M. Pennybacker and Sarah H. G. Pennybacker, for themselves and for their heirs, executors, and administrators, do hereby covenant with the said C. P. Huntington, his heirs and assigns, that they are the true and lawful owners of the said premises, and have full power to convey the same; that the title so conveyed is clear, free, and unencumbered, and, further, that they will generally warrant and defend the same against all claim
22 or claims of all persons whomsoever.

In witness whereof the said John M. Pennybacker and S. H. G. Pennybacker have hereunto set their hands and seals this 25th day of February, in the year of our Lord one thousand eight hundred and seventy.

Signed, sealed, and delivered in presence of us.

J. M. PENNYBACKER. [SEAL.]
S. H. PENNYBACKER. [SEAL.]

[U. S. rev. stamp, $11.00, eleven dollars.]

THE STATE OF WEST VIRGINIA, }
County of Cabell, Guyandotte Township, } *ss.*

Be it remembered that on the 25th day of February, in the year of our Lord one thousand eight hundred and seventy, before me personally came John M. Pennybacker, party and grantor in the fore-

going deed, and acknowledged the signing thereof to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my seal on the day and year aforesaid.

THO. J. HAYSLIP, [SEAL.]
Recorder.

STATE OF WEST VIRGINIA, *County of Cabell:*

23 Personally came before me, the undersigned, recorder of the county and State aforesaid, Sarah H. G. Pennybacker, wife of the above-mentioned John Pennybacker, & party to the foregoing deed, and being examined by me privily and apart from her husband, and having the deed aforesaid fully explained to her, she, the said Sarah H. G. Pennybacker, acknowledged that she had willingly signed, sealed, and delivered the same, and wished not to retract it.

Given under my hand and seal this 25th day of February, 1870.

THO. J. HAYSLIP, [SEAL.]
Recorder.

WEST VIRGINIA, }
Cabell County, } ss:

RECORDER'S OFFICE.

This deed, from J. M. Pennybacker and wife to C. P. Huntington, was this day presented to me, the recorder of the county and State aforesaid, together with the certificates of acknowledgment thereon endorsed. The same is admitted to record.

Given under my hand this 31st day of March, 1870.

THOS. J. HAYSLIP, *Recorder,*
By TH. J. F. HAYSLIP, *Dep't.*

A true copy from the record.

Teste: M. S. THORNBURG, *Clerk.*

Exhibit "E," filed with plaintiff's bill, is in the words and figures following, to wit:

24 This deed, made this 13th day of April, 1870, between Alber Laidley and Vesta, his wife, of the first part, and C. P. Huntington, of the second part, witnesseth: That in consideration of the sum of thirty-six thousand six hundred and seventy-three $\frac{50}{100}$ dollars, the receipt of which is hereby acknowledged, the said party of the first part doth grant unto the said party of the second part all of two certain tracts or parcels of land lying and being in the county of Cabell, State of West Virginia, and in the township of Guyandotte, bounded and described as follows, to wit: One tract containing two hundred and ninety-nine acres bounded and described as follows: Beginning at a stake northeast corner of S. W. Johnston's land and running with the upper line thereof S. 20$\frac{1}{4}$° E. 308$\frac{1}{2}$ p. to a stake; thence N. 80- W 3 poles and 18 links to a stone; thence S. 75° W. 115 p. to a stone near a sycamore tree southwest corner of S. W. Johnston's land; thence S. 21° E. 112 po. to a stake on Watson's line at a dogwood; thence with s'd Watson's line S. 68- W. 60 po. to the dogwood corner; thence S. 21° W. 36 p. to two wh't-

oaks, beeches, and sugar trees; S. 10° W. 114 p. to three wh't- oaks on a ridge; S. 65- E. 48 poles to two wh't-oaks; N. 84° E. 46 poles to wh't- oak and locust stump; N. 49- E. 160 po. to a bl'k oak and chestnut oak; S. 88° W. 110 p. to a stake from which a black walnut
25 N. 21½- E. 2 p. and 7 links and an apple tree S. 29½- W. 4 po. stands; N. 29- E. 186 po. to a chestnut oak on a hillside; N. 33° E. 61 po. to two double willows; N. 20- W. 186 po. to a stone; S. 70- W. 25 poles 15 links to a stone; N. 20- W. 25 poles to a stone near the turnpike; N. 70° E. 25 p. and 15 links to a stone; N. 20° W. 121 p. to a stake on the Ohio river; S. 70° W. 53 p. and 16 links to the beginning, it being the same which was conveyed to me on the 22nd day of March, 1870, by deed of John L. Johnston and Mary Jane, his wife, and Wm. L. Johnston and Susan, his wife, by deed recorded in deed-book "B," page 422, of Cabell county; one tract containing one hundred and ten acres, situate in Cabell county and bounded on the southeast by F. D. Beuhring, on the east by E. M. Frampton, and on the north by the lands formerly of Wm. L. and J. L. Johnston and hereinbefore described, and parcel of a certain tract of 800 acres of the s'd Laidley, fully described in a deed of O. A. and E. McGinnis, recorded in deed-book J, page 441, of Cabell county, which is to be laid off by the party of the second part, or under his direction, by lines which shall not cross the Porterfield ridge, and the metes, bounds, and abuttals so established shall be regarded as the metes, bound-, and abuttals intended by this conveyance, but
26 not including one and — half acres sold to Sam'l Allen by s'd Laidley, and also his entire interest in a tract of land containing 240 acres, purchased of J. M. Pennybacker and wife by said Laidley and conveyed by his directions to C. P. Huntington, the title to which the s'd Laidley covenants to warrant and defend generally; and the said party of the first part doth hereby covenant with the said party of the second part that he will warrant generally the property hereby conveyed.

Witness the following signatures and seals:

ALBERT LAIDLEY. [SEAL.]
VESTA LAIDLEY. [SEAL.]

STATE OF WEST VIRGINIA, *Cabell County*, } *To wit:*

I, Jno. W. Church, notary public in and for the county and State aforesaid, do certify that Albert Laidley and Vesta Laidley, his wife, whose names are signed to the writing hereto annexed, bearing date on the 13th day of April, 1870, have acknowledged the same before me in my county aforesaid, and the said Vesta Laidley, being examined by me privily and apart from her husband, and having the writing aforesaid fully explained to her, she, the said Vesta Laidley, acknowledged the said writing to be her act and declared that
27 she had willingly executed the same and does not wish to retract it.

Given under my hand this 13th day of April, 1870.

JNO. W. CHURCH,
Notary Public.

STATE OF WEST VIRGINIA, *Cabell County:*

RECORDER'S OFFICE, *April 16th*, 1870.

The foregoing deed, with U. S. internal revenue stamps thereon for thirty-seven (37) dollars, was this day presented in said office and, together with the certificates thereon, admitted to record.

Teste: THO. J. HAYSLIP, *Recorder.*

A true copy from the record.

Teste: M. S. THORNBURG, *Clerk.*

Fee, $1.25.

Exhibit "F," filed with the plaintiff's bill, is in the words and figures following, to wit:

This deed, made the sixteenth day of October, in the year one thousand eight hundred and seventy-one, between Collis P. Huntington, of the city, county, and State of New York, and Elizabeth S., his wife, parties of the first part, and the Central Land Company of West Virginia, a corporation created by and under the
28 laws of the State of West Virginia, party of the second part, witnesseth: That in consideration of the sum of six hundred thousand dollars the said parties of the first part do grant unto the said part- of the second part all those tracts, pieces, or parcels of land situate, lying, and being in the county of Cabell and State of West Virginia:

First. All that certain piece or parcel of land bounded and described as follows, to wit: Beginning (metes and bounds omitted), being the same premises which were conveyed to said C. P. Huntington by James H. Buffington and Columbia L., his wife, by deed dated February 14th, 1870, recorded in the recorder's office of said Cabell county, March 22d, 1870, in deed-book B, page 408.

Second. All that certain piece or parcel of land lying and being on the Ohio river and bounded and described as follows, to wit: Beginning at (metes and bounds omitted), being the same premises which were conveyed to the said C. P. Huntington by John N. Buffington, of said Cabell county, by deed dated the 20th day of July, 1870, recorded in the recorder's office of said county of Cabell, July 27, 1870, in deed-bood B, folio 508.

Third. All that tract of land situate in said Cabell county,
29 West Virginia, containing four hundred and fifty-six acres, more or less, and described generally as follows: Beginning at, &c. (metes and bounds omitted here, being identical with those set out in Exhibit A, on page 8 of this record), being the same premises which were conveyed to the said C. P. Huntington by Albert Laidley and Vesta, his wife, by deed dated October 20, 1870, recorded in the recorder's office of said county of Cabell on the 22d day of October, 1870, in deed-book C, folio 2, subject to the reservations and exceptions contained in said deed.

Fourth. All those certain tracts or parcels of land situate in said county which, in a certain deed executed by Albert Laidley and Vesta, his wife, to said C. P. Huntington, dated April 13th, 1870, re-

corded in the recorder's office of said county April 16, 1870, in deed-book "B," [folio] 445, *and* bounded and described as follows, to wit: (Metes and bounds omitted here, being identical with those set out in Exhibit E, on page 23 of this record), and also his entire interest in a tract of land, containing 240 acres, purchased of J. M. Pennybacker and wife by said Laidley, and conveyed by his directions to C. P. Huntington, the title to which said Laidley covenants
30 to warrant & defend generally.

Fifth. All those three certain tracts or parcels of land situate in said county which, in a certain deed executed by the said Albert Laidley and Vesta, his wife, to said C. P. Huntington, dated July 25th, 1870, recorded in the recorder's office of said county July 25th, 1870, in deed-book B, folio 505, *and* bounded and described as follows, to wit: (Metes and bounds omitted here, being identical with those in Exhibit C, on page 15 of this record.)

Sixth. All those two certain tracts or parcels of land situate in said county which, in a certain deed executed by the said Albert Laidley and Vesta, his wife, to said C. P. Huntington, dated October 20th, 1870, recorded in the recorder's office of said county October 22d, 1870, in deed-book C, folio 1, *and* bounded and described as follows, to wit: (Metes and bounds omitted here, being identical with those in Exhibit B, on page 11 of this record.)

Seventh. All that certain tract of land which, in a certain deed executed by John M. Pennybacker and Sarah, his wife, to said C. P. Huntington, dated February 25th, 1870, recorded in the recorder's office of said county March 31st, 1870, in deed-book B, pages 427 & 428, is bounded and described as follows, to wit: (Metes
31 and bounds omitted here, being identical with those in Exhibit D, on page 19 of this record), being the same 240 acres above referred to in the closing paragraph of the fourth description.

Eighth. All that certain tract of land situate in the county of Cabell and State aforesaid which, in a certain deed executed by said Albert Laidley and Vesta, his wife, to said C. P. Huntington, dated December 7, 1870, recorded in the said recorder's office Dec'r 7, 1870, in book C, folio 39, is bounded and described as follows, to wit: All of that tract of land s'd Albert Laidley bought of Wm. P. Holderly and deeded on the 7th day of October, 1870, and recorded in deed-book B, page 554, in Cabell county, W. Va., which was not heretofore deeded by said Laidley to said Huntington and described as follows: On the east by Wm. P. Holderby, on the south by the C. & O. railroad as at present located, on the west by the lands of s'd Huntington, formerly Poage, and on the north by said Huntington, formerly Wm. P. Holderby, containing forty acres, more or less.

Ninth. All that certain lot, piece, or parcel of land which, in a certain deed executed by William P. Holderby to said C. P. Huntington (description omitted).

32 Tenth. All that certain tract of land which, in a certain deed executed by Elisha T. Mitchell and Elizabeth M., his wife, to said C. P. Huntington (description omitted).

Eleventh. All that certain tract of land which, in a certain deed

executed by William P. Holderby to said C. P. Huntington (description omitted.)

Twelfth. All that certain tract of land which, in a certain deed executed by E. S. Holderby and C. A. Holderby, his wife, to said C. P. Huntington, &c. (description omitted).

Thirteenth. All that certain tract of land which, in a certain deed executed by J. Harvey Poage and Sarah A., his wife, to said C. P. Huntington, &c. (description omitted), * * * together with all and singular the tenements, hereditaments, and appurtenances to the said several tracts or parcels of land belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, dower, and right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances: to have and to hold all and singular the above mentioned and
33 described premises, together with the appurtenances, unto the said party of the second part, its heirs and successors and assigns, forever.

And the said C. P. Huntington doth hereby covenant with the said party of the second part that he will warrant especially the property hereby conveyed.

Witness the following signatures and seals:

C. P. HUNTINGTON. [SEAL.]
E. S. HUNTINGTON. [SEAL.]

Sealed and delivered in the presence of—
JAS. H. STORRS.
CHARLES NETTLETON.

STATE OF NEW YORK, }
City and County of New York, } *ss, to wit:*

I, Charles Nettleton, a commissioner appointed by the Governor of the State of West Virginia for the State of New York, do certify that Collis P. Huntington, whose name is signed to the foregoing instrument, bearing date on the sixteenth day of October, A. D. one thousand eight hundred and seventy-one, has acknowledged the same before me in my State aforesaid.

Given under my hand and official seal this 16th day of October, A. D. 1870.

[SEAL.] CHARLES NETTLETON,
Commissioner for West Virginia in New York,
117 *Broadway, New York City.*

34 STATE OF NEW YORK, *City and County of New York:*

I, Charles Nettleton, a commissioner appointed by the Governor of the State of West Virginia for the State of New York, do certify that Elizabeth F. Huntington, the wife of Collis P. Huntington, whose name is signed to the foregoing instrument, bearing date on

the sixteenth day of October, A. D. one thousand eight hundred and seventy-one, personally appeared before me in the county and State aforesaid, and being examined by me privily and apart from her husband, and having the instrument aforesaid fully explained to her, she acknowledged the said instrument to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand and official seal this 16th day of October, A. D. 1871.

[Seal Charles Nettleton, Commissioner for West Va. in New York.]

CHARLES NETTLETON,
Commissioner for West Virginia in New York,
117 *Broadway, New York City.*

RECORDER'S OFFICE,
CABELL COUNTY, WEST VIRGINIA, *December 6th*, 1871.

35 This deed, from Collis P. Huntington and wife to the Central Land Company of West Virginia, with United States revenue stamp thereon, for six hundred dollars ($600.00), was this day presented in said office, and, together with the certificates thereon endorsed, admitted to record.

Teste: F. J. HAYSLIP, *Recorder*,
By T. J. F. HAYSLIP, *Deputy*.

STATE OF WEST VIRGINIA, }
Cabell County, } *To wit:*

I, M. S. Thornburg, clerk of the county court of Cabell county, do hereby certify that the foregoing is a true abstract of the deed from C. P. Huntington and wife to the Central Land Company of West Virginia as recorded in deed-book "C," page "252," Cabell county clerk's office.

Given under my hand the 12th day of January, 1882.

M. S. THORNBURG, *Clerk*.

$3.80 fee.

STATE OF WEST VIRGINIA, }
County of Cabell, } *To wit:*

I, M. S. Thornburg, clerk of the county court of Cabell county, do further certify that the foregoing is a true copy of so much of the deed from C. P. Huntington to the Central Land Company, bearing date the 16th day of October, 1871, and recorded in
36 deed-book C, page 252, in the county court clerk's office of Cabell county, as was ordered to be copied. Several grants of land lying in the Kanawha Valley are omitted in this copy at the close of the deed, as indicated by the stars, and according to instructions of plaintiff's att'y.

By consent the foregoing shall have the same effect, as far as it relates to the title of lands on the Ohio river, as if the whole deed were copied.

Att'y for Pl'ff.

Att'y for Def'ts.

(Affidavit for order of publication, order of publication, certificate of W. A. Gibson, publisher, and endorsements on plaintiff's bill omitted here.)

At a circuit court held for Cabell county, at the court-house thereof, on the 22d day of May, 1882, an order was made and entered in this cause, which is in the words and figures following, to wit:

VESTA LAIDLEY, Plaintiff,
vs.
C. P. HUNTINGTON, ELIZABETH HUNTINGTON, and THE CENTRAL LAND COMPANY OF WEST VIRGINIA, Defendants. } In Chancery.

37 This day came the plaintiff, by her attorney, and thereupon came also the defendants, C. P. Huntington and Elizabeth Huntington, by their attorney, and presented their joint demurrer in writing to the plaintiff's bill; and the Central Land Company of West Virginia, by attorney, presented its demurrer in writing to the plaintiff's bill, which demurrers are ordered to be filed and set down for argument.

Demurrer of C. P. & Elizabeth Huntington.

VESTA LAIDLEY, Complainant,
vs.
C. P. HUNTINGTON, ELIZABETH HUNTINGTON, and THE CENTRAL LAND COMPANY, Defendants. } In Chancery.

The joint demurrer of C. P. Huntington and Elizabeth Huntington to the bill of complaint filed against them and another in the above-entitled suit now pending in the circuit court of Cabell county, West Virginia, respectfully shows that the said bill is not sufficient in law; wherefore the said defendants, C. P. Huntington and Elizabeth Huntington, pray judgment whether they shall be required to make further or other answer to said bill. And as in duty, &c.

C. P. HUNTINGTON,
ELIZABETH HUNTINGTON,
By Counsel.
WM. H. HOGEMAN.

38 *Demurrer of the Central Land Co.*

VESTA LAIDLEY, Plaintiff,
vs.
C. P. HUNTINGTON, ELIZABETH HUNTINGTON, & CENTRAL LAND CO. OF WEST VA., Defendants. } In Chancery.

The demurrer of the Central Land Company to the bill of complaint filed against it and others in the above-entitled cause now pending in the circuit court of Cabell county, West Virginia, respectfully shows that the said bill is not sufficient in law; wherefore the defendant, the Central Land Company, pray judgment.

whether they shall be required to make further or other answer to said bill.

THE CENTRAL LAND COMPANY OF WEST VA.,
SIMMS & ENSLOW, *Sol's.* *By Counsel.*

And on another day, to wit, at a circuit court held for Cabell county, at the court-house thereof, on the 26th day of May, 1882.

VESTA LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF W. VA. *et als.* } In Chancery.

This cause this day came on to be heard upon the bill and
39 exhibits and the separate demurrers of the defendants heretofore filed, and after full argument thereof the court doth overrule said demurrers, but without at this time deciding upon the sufficiency of the certificates of acknowledgment to the several exhibits filed with the bill; and thereupon the plaintiff moved the court to dismiss her suit as to the defendants C. P. Huntington and Elizabeth Huntington; to which motion the said C. P. Huntington and Elizabeth Huntington objected, which motion and objection being argued by counsel on both sides *was* submitted to the court for decision; and thereupon after said hearing and submission the said C. P. Huntington and Elizabeth Huntington tendered their petition and bond praying a removal of the cause to the district court of the United States for the district of West Virginia, sitting at Charleston and exercising circuit court powers. The court being unadvised as to the said motion of the plaintiff to dismiss the cause as to C. P. Huntington and Elizabeth Huntington takes until the next term to consider thereof, and on motion of the plaintiff a rule is awarded against the defendant, the Central Land Company of West Virginia, to answer the bill, returnable to the next term
40 of this court, until which time this cause is continued.

Petition for Removal.

In the Circuit Court of Cabell County, West Virginia.

VESTA LAIDLEY, Complainant,
vs.
C. P. HUNTINGTON, ELIZABETH HUNTINGTON, and THE CENTRAL LAND COMPANY, Defendants. } In Chancery.

Petition for removal to the district court of the United States for the district of West Virginia, sitting at Charleston, in said district; and exercising circuit court powers.

To the honorable judge of said court:

The petition of C. P. Huntington and Elizabeth Huntington, filed in the above-entitled suit now pending in said court, respectfully shows that the matter and amount in dispute in said suit exceeds, exclusive of costs, the sum or value of five hundred dollars; that there is a controversy in said suit which is wholly between citizens

of different States, namely, between your petitioners, who are defendants in said suit, and the plaintiff; that the said controversy exceeds, exclusive of costs, the sum or value of five hundred dollars, and that the said controversy can be fully determined
41 between your petitioners, defendants and the plaintiff, and that Vesta Laidley, the plaintiff, was at the time of the commencement of said suit, and still is, a citizen of the State of West Virginia, and that your petitioners were at the time of the commencement of said suit, and still are, citizens of the State of New York. Your petitioners offer herewith a bond with good and sufficient surety for their entering in the district court of the United States for the district of West Virginia, sitting at Charleston, and exercising circuit powers, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said district court if said court shall hold that this suit was wrongfully or improperly removed thereto.

And your petitioners pray this honorable court to proceed no farther herein, except to make the order of removal required by law, and to accept the said surety and bond, and cause the record herein to be removed into said district court of the United States in and for the district of West Virginia, sitting at Charleston.

42 And your petitioners will ever pray, &c.

C. P. HUNTINGTON,
ELIZABETH HUNTINGTON,
By WM. H. HOGEMAN, *Attorney.*

(The bond for removal and the order of the circuit court of Cabell county, West Va., filing the answer of the Central Land Company of West Virginia and the said answer are omitted.)

STATE OF WEST VIRGINIA, }
Cabell County, } *To wit:*

I, M. S. Thornburg, clerk of the circuit court of Cabell county, in the State aforesaid, do certify that the foregoing is a true transcript from the record and proceedings made and had in said court in the chancery cause of Vesta Laidley, plaintiff, against C. P. Huntington, Elizabeth Huntington, and the Central Land Company of West Virginia, defendants, except I have not copied in said record the answer of the Central Land Company of West Virginia, the said answer having been lost or misplaced, so that I have been unable to find the same, and that I have used due diligence to find said answer.

43 Given under my hand the 27th day of October, 1882.

M. S. THORNBURG,
Clerk of Cabell County Circuit Court, West Virginia.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston November 1st, 1882:

This day the complainant, by J. H. & J. F. Brown, her counsel,

moved the court to remand this cause to the circuit court of Cabell county.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston November 8, 1882:

This day came the parties, by their attorneys, and thereupon the complainant, by James F. Brown, Esqr., her attorney, moved the court to remand this cause to the circuit court of Cabell county, from whence it came; to which motion defendants objected, and time is taken to consider thereof.

And at another day, to wit, at a district court of the United
44 States for the district of West Virginia, held at Charleston on Saturday, November 11, 1882:

This day came again the parties, by their attorneys, and thereupon the complainant's motion entered herein on a former day to remand the cause to the circuit court of Cabell county, from whence it came, having been fully argued by counsel for the respective parties and considered by the court, the court is of opinion to and doth accordingly overrule said motion and doth refuse to remand this cause to said circuit court of Cabell county; to which complainant excepted.

And thereupon the defendants moved the court for leave to reargue the demurrer heretofore filed herein on the point on which the circuit court of Cabell county expressed no opinion in disposing of said demurrer, and there being no objection thereto, such leave is granted, and the said demurrers are set down for argument.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston on Thursday, May 10th, A. D. 1883:

45 This day this cause is submitted, on the motion of the plaintiff to dismiss this cause as to the defendants C. P. Huntington & Elizabeth Huntington, heretofore made in the circuit court of Cabell county, which motion the court overruled, and thereupon the cause came on again to be heard on the demurrers to the complainant's — heretofore filed herein and leave to reargue which was heretofore allowed herein, and the matters arising on said demurrers having been fully argued by counsel for the respective parties the court is of opinion to and doth accordingly sustain the said demurrers, and the complainant (not desiring to amend her aforesaid bill, except to dismiss the cause as to the said C. P. Huntington and Elizabeth Huntington, which leave is refused by the court), it is adjudged, ordered, and decreed that the complainant's bill be dismissed and that the defendants recover of the complainant their costs herein expended.

Whereupon said complainant, by her solicitor, prays an appeal to the Supreme Court of the United States, which is allowed, and the bond to be given on said appeal is fixed at $200, and thereupon the plaintiff tendered a bond in the penalty aforesaid, with
46 security conditioned according to law, which bond and security is accepted and approved by the court, and the court

doth certify that the property involved and in controversy in this suit is of greater value than $5,000.

The bond referred to in the foregoing order is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, Vesta Laidley and James F. Brown, are held and firmly bound unto the United States of America in the just and full sum of two hundred dollars, for the true payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly, by these presents.

Sealed with our seals and dated this 10th day of May, 1883.

The condition of the above obligation is such that whereas the above-bound Vesta Laidley has obtained from the judge of the district court of the United States for the district of West Virginia, at Charleston, an appeal to the Supreme Court of the United States from the decision of the said district court in the chancery
47 cause of Vesta Laidley against C. P. Huntington & others:

Now, therefore, if the said Vesta Laidley shall prosecute to effect the said appeal to the said Supreme Court, and shall pay all fees due and to become due to the officers of this court, then this obligation to be void; else to remain in full force.

VESTA LAIDLEY. [SEAL.]
J. F. BROWN. [SEAL.]

Acknowledged before me and approved.

J. J. JACKSON,
Dist. Judge.

And now at this day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, the day and year first hereinbefore mentioned, on motion of Vesta Laidley, the complainant in the above-entitled cause, to whom this court has awarded an appeal to the Supreme Court of the United States from the final decree entered therein and order of refusal to remand said cause to the circuit court of Cabell county, the court doth certify that the matter in dispute in said cause exceeds the value of
48 $5,000, exclusive of costs. And it being suggested that the appeal bond heretofore given and approved herein may be insufficient, on motion the said Vesta Laidley has leave to file an additional appeal bond in the penalty of $500, which is accordingly done, with good security, conditioned according to law, which bond and security is approved by the court.

Which bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, Vesta Laidley and James F. Brown, are held and firmly bound unto the United States of

America in the just and full sum of five hundred dollars; to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly, by these presents.

Sealed with our seals and dated this 24th day of August, 1883.

The condition of the above obligation is such that whereas the above-bound Vesta Laidley has obtain- from the judge of the district court of the United States for the district of West Virginia, at Charleston, an appeal to the Supreme Court of the United
49 States from the decision of the said district court in the chancery cause of Vesta Laidley against C. P. Huntington and others:

Now, therefore, if the said Vesta Laidley shall prosecute to effect the said appeal to the said Supreme Court, and shall answer all costs if they should [fail] to make good her plea, then this obligation to be void; else to remain in full force.

VESTA LAIDLEY. [SEAL.]
J. F. BROWN. [SEAL.]

Acknowledged before me and approved.

J. J. JACKSON, *Judge.*

I, Jasper Y. Moore, clerk of the district court of the United States for the district of West Virginia, do certify that the foregoing is a true and complete transcript of the record and proceedings in a cause lately pending in my said court at Charleston, wherein Vesta Laidley was complainant and C. P. Huntington & others were defendants, in chancery, excepting such parts of such record and proceedings as are mentioned in this transcript as being omitted.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my said court, at Charleston, on the 11th day of September, A. D. 1883.

[Seal of District Court United States, District West Virginia, Charleston, West Va.]

JASPER Y. MOORE,
Clerk Dist. Ct U. S., Dist. W. Va.

Clerk's fee for this record, $19.10.

Endorsed on cover: West Virginia D. C. U. S. No. 16. Vesta Laidly, appellant, *vs.* C. P. Huntington, Elizabeth Huntington, and The Central Land Company. Filed 12th October, 1883.

121-179.

SUPREME COURT U.S.
FILED
FEB 2 1887
JAMES H. McKENNEY
CLERK.

IN THE SUPREME COURT

OF THE

United States.

VESTA LAIDLEY, Appellant,

v.

C. P. HUNTINGTON and others.

BRIEF OF J. F. BROWN FOR VESTA LAIDLEY, Appellant.

THE GAZETTE AND PUBLIC OPINION STEAM, CHARLESTON, W. VA.

IN THE SUPREME COURT

OF THE

United States.

VESTA LAIDLEY, Appellant,

v.

C. P. HUNTINGTON and others.

BRIEF OF J. F. BROWN FOR VESTA LAIDLEY, Appellant.

This is an appeal from two decrees of the District Court of the *United States* for the district of *West Virginia*: one overruling the Plaintiff's motion to remand the cause to the State court; the other sustaining the demurrer to the bill, and dismissing the suit.

STATEMENT OF THE CASE.

The bill was filed December 20, 1881, in the Circuit Court of *Cabell* county, *West Virginia*, by *Vesta Laidley*, a citizen of that State, against *C. P. Huntington* and wife, citizens of *New York*, and the *Central Land Company*, a *West Virginia* corporation.

It charged that the plaintiff was married to one *Albert Laidley* October 30, 1845; that her husband died December 7, 1876; that during coverture he was seized in fee of several valuable tracts of land situate in said county, more particularly described in the exhibits filed with the bill; that in 1870 her husband conveyed these lands to *C. P. Huntington*, who in 1871, together with his wife, Elizabeth, conveyed them to the defendant *Company*; that the plaintiff, by reason of the premises, was entitled to dower in these lands, never having relinquished the same in the manner prescribed by law. That the defendant *company*, present owner of the lands, refused to assign dower, under pretext that said conveyances barred her right; and prayed that dower be assigned her; or its value be decreed to her in money; and for general relief.

The several conveyances alluded to were exhibited with the bill.

May 22, 1882, the defendants, *Huntington* and wife, filed their joint demurrer to the bill, and on the same day the *Land Company* filed its separate demurrer; and on May 26th, following, the following order was entered:

"Vesta Laidley,
v.
The Central Land Company et als. } In Chancery.

This cause this day came on to be heard upon the bill and exhibits and the separate demurrers of the defendants heretofore filed, and after full argument thereof the Court doth overrule said demurrer, but without, at this time, deciding upon the sufficiency of the certificates of acknowledgements to the several exhibics filed with the bill. And thereupon the plaintiff moved the Court to dismiss her suit as to the defendants, C. P. Huntington and Elizabeth Huntington, to which motion the said C. P. Huntington and Elizabeth Huntington objected; which motion and objection being argued by counsel on both sides was submitted to the Court for decision; and thereupon after said hearing and submission, said *C. P. Huntington* and *Elizabeth Huntington*, tendered their petition and bond, praying a removal of the cause to the District Court of the United States for the district of West Virginia, sitting at Charleston, and exercising Circuit Court powers.

The Court being unadvised as to the said motion of the plaintiff to dismiss the cause as to C. P. Huntington and Elizabeth Huntington, takes until the next term to consider thereof, and on motion of the plaintiff a rule is awarded against the defendant, The Central Land Company of West Virginia, to answer the bill, returnable to the next term of the Court, until which time this cause is continued." (See R., p. 17.)

As the sole ground for removal the petition alleged:

"That there is a controversy in said suit *wholly* between *citizens of different States*, namely, between your petitioners who are defendants in said suit and the plaintiff."

November, 1882, *Huntington* and wife, the petitioners, filed a transcript of the record in the District Court of the *United States* for the District of *West Virginia*; whereupon that Court order the cause to be there docketed, and proceeded in.

On the same day, the plaintiff moved the Court to remand the cause to the State Court; and *afterward*, on November 8, 1882, renewed the motion; "to which motion the defendants objected."

November 11, 1882, the Court overruled the motion and refused to remand the cause.

May 10, 1883, the plaintiff renewed her motion, made in the State Court, for leave to dismiss the bill as to *Huntington and wife*, but the Court overruled this motion also; and thereupon sustained the demurrers, and dismissed the bill.

ERRORS.

The Court erred:

First.—In refusing to remand the cause.

Second.—In denying the plaintiff leave to dismiss her bill as to Huntington and wife.

Third.—In sustaining the demurrers, and dismissing the bill.

I.

The cause should have been remanded.

The plaintiff, asking dower, was a citizen of *West Virginia*. *Huntington*, her husband's alience, was a citizen of *New York*. And the *Land Company*, Huntington's alience, and then owner of the lands, was a corporation created and organized under the laws of the State of *West Virginia*, the same State of which the plaintiff was a citizen.

Thus it is seen, that the plaintiff, whose sole claim is for dower in these lands, was a citizen of the same State with the defendant company, the then owner of the lands in which the dower is claimed.

The only *non residents*, were *C. P. Huntington*, the intermediate vendor between the plaintiff's husband and the defendant company; and his *wife*, who joined him in his deed to the company for the purpose of releasing her contingent right of dower.

The record shows that neither *Huntington*, nor his wife, had any possible interest in the suit, or in any controversy therein; and the bill should have been dismissed as to them; as the plaintifl asked the State Court. In no event were they necessary parties to the suit. See *Blair* v. *Thompson*, 11 Gratt. (Va.) 441.

The Court there says:

"The suit was a simple claim for dower, to be laid off and assigned to the plaintiff in the court below, in lands of which she alleged her husband was beneficially seized during coveture; and for an account of the rents and profits. The purchaser in possession holding the legal title by deed duly of record, was the only person against whom the plaintiff was entitled to a decree. She had no privity or claim against the *intermediate* parties, through whom the legal title passed from her husband to the purchaser in possession."

Huntington and wife, were the "intermediate vendors" in this case, and were not necessary parties. No decree could be rendered against them, or in their favor, in this cause. There was no privity between them and the plaintiff. Hence, the State Court should have at once granted the plaintiff's motion to dismiss, as to them.

The motion was duly made, argued, and "*submitted for decision.*" The *subsequent* tender of the petition for removal, came *too late*. The dismission of the suit by the plaintiff, as to *Huntington* and wife, was matter of *right*, and spoke as of the date of the motion.

If this view be correct, the suit must be treated as dismissed, as to them, before the petition was tendered. In any event, the petition was not tendered until after the case was argued and submitted for a decision, upon a motion, which if sustained, terminated the cause as to them. It was not competent to thus intercept the judgment of the Court upon a motion already "argued and submitted for decision."

But in no event did the Federal Court have jurisdiction.

The record *disproved* the only allegation upon which the claim of jurisdiction was founded, namely: That there was a seperable controversy wholly between the petitioners, *Huntington* and wife, and the plaintiff *Vesta Laidley*.

The record shows that the *sole* controversy, was between the plaintiff, a citizen of *West Virginia*, of the one part, and the *Central Land Co.*, a citizen of the *same State*, of the other part—between the widow, claiming dower, and the then owner in possession of the lands in which the dower was claimed.

As stated by the Court in the case of *Blair* v. *Thompson*, 11 Gratt. 445, just cited; there was no privity between the widow and the immediate vendors, and could be no decree either for or against the *latter*.

The record shows that there was, in fact, *no* controversy between the plaintiff and the petitioner, and that there could be none.

Such was the decision of the Court in the case cited from 11 Gratt., notwithstanding the intermediate vendors there, were incidently interested through their warranty of the title.

The case at bar is stronger. Neither *Huntington* nor his wife had even such an incidental interest in the suit, upon which to base their claim for a controversy.

As stated, *Mrs. Huntington's* sole connection with the land, was her joinder in the deed, for the purpose of releasing her contingent right of dower; she did not attempt to warrant the title, and under the laws of West Virginia, could not have done so, had she made the attempt; (see statute quoted *post*).

C. P. Huntington had no greater interest in the result of the suit; having parted with all his interest in the land to the defendant company, and limited his responsibility for the title by covenant of *special* warranty. (See deed, record, page 14.)

But even if *Huntington's* connection with the suit could be tortured into a "controversy" between him and the plaintiff. The case fails to present a *separate controversy* wholly between them.

In determining the question of a seperable controversy within the meaning of the removal acts the general rule is laid down in the case of *Ayres v. Wiswall*, 112 U. S. 197, as follows:

"The rule is now well established that this clause in the section refers only to suits where there exists a separate and distinct cause of action, on which a separate and distinct suit, might have been brought, and complete relief afforded as to such cause of action, with all the parties on the one side of that controversy, citizens of different States from those on the other. To say the least, the case must be one capable of separation into parts, so that in one of the parts a controversy will be presented, with the citizens of one or more States on one side and the citizens of other States on the other, which can be fully determined without the presence of the other parties to the suit, as it has been begun."

See also:

Coney v. Winchell, 116 U. S. 227.

Shaeuwold v. Lewis, 108 U. S. 158.

Fidelity Ins. Co. v. Huntington, 117 U. S. 280.

The case at bar presents but *one* controversy; and to this the land company, a citizen of the same State with the plaintiff, is a *necessary* party. We are unable to discover in the case presented, a *separate* controversy, between the plaintiff and the petitioners.

It is respectfully submitted that the cause should have been remanded to the State court.

II.

Two questions were raised by the demurrer to the bill.

First.—The sufficiency of the certificates of acknowledgement by the plaintiff, to the several exhibits "A," "B," "C" and E."

The statute of West Virginia in force at the date of these acknowledgements was as follows:

"SEC. 4. When a husband and his wife have signed a writing purporting to convey real estate, she may appear before a clerk of a county court authorized to admit such writing to record, in his office, and if, on being examined privily and apart from her husband by such clerk of the county court, and having such writing fully explained to her, she acknowledge the same to her act, and declare that she had willingly executed the same, and does not wish to retract it, such privy examination, acknowledgment and declaration, shall then be recorded by such clerk of the county court in his office; or she may appear before a justice or notary public, &c., and such notary public, &c., may so examine her: and if, after such examination, she make such acknowledgement and declaration, shall certify the same on, or annexed to the said writing, to the following effect, to-wit:

"State (or territory or district) of ——— county of ——— to-wit: 'I ———, a justice for the county aforesaid, and district, (or township) of ———; or I, ——, a notary public, &c., do certify that ———, the wife of ———, whose names are signed to the writing above or (or hereto annexed) bearing date on the —— day of ——, personally appeared before me in the county aforesaid, and being examined by me privily and apart from her husband, and having the said writing full explained to her, she the said ——, acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it. Given under my hand this — day of—— .'"

* * * * * * *

"SEC. 5. Such certificate, either where the wife is without or within the United States, shall be admitted to record at the time of admitting the writing to which it is annexed, or on which it is."

"SEC. 6. When a privy examination, acknowledgment and declaration of a married woman, shall have been so taken and recorded in the office of the clerk of the county court; or when the same shall have been so taken and certified as aforesaid, and the writing to which such certificate is annexed, or on which

it is, shall have been delivered to the proper clerk of the county court, and admitted to record as to husband as well as wife; such writing shall operate to convey from the wife, her right of dower in the real estate embraced therein, and pass from her and her representatives all right, title and interest of every nature, which at the date of such writing she may have in any real estate conveyed thereby, as effectually as if she were, at said date, an unmarried woman; and such writing shall not operate any further upon the wife, or her representatives, by means of any covenant of warranty therein contained."

This statute has been considered by the Supreme Court of Appeals of Virginia in the following cases:

Leftwitch v. Neal, 7 W. Va. 575.

Laughlin Bros. & Co. v. Fream 14 W. Va. 322.

McMiller v. Eagan, 21 W. Va. 323.

Watson v. Michael, *Id.* 568.

Laidley v. Knight, 23 W. Va. 731.

In every case a rigid compliance with the statute, has been held essential.

In the case of *Watson v. Michael*, 21 W. Va. 568, the court in construing this statute says:

"The first requirement is, that the wife be examined privily and apart from her husband, touching the execution of the deed. While she is undergoing this private examination, *four* things are by the statute *absolutely* required. First, *the deed must be fully explained to her*. After it has been fully explained to her, she must then *acknowledge* it. After this, she must make two declarations. First, that *she had willingly executed the same;* and the second, that *she does not want to retract it*. All these things *must* appear in the *certificate*."

None of the certificates in question, meet the requirements of this statute as construed by the courts, of last resort, of West Virginia, and of Virginia, prior to the separation of the States. By an unbroken line of decisions in both States, deeds of this kind have been uniformly held void as to the wife.

The certificates to Exhibits "A" and "B" (Record pp. 4 and 6), are each, fatally defective.

In lieu of the declaration required by the statute, "that she had willingly *executed* the same" is substituted the words "that she had voluntarily signed the same."

In the case of *Leftwich v. Neal*, 7 W. Va. 474, the learned judge says:

"Here is the express provision of the statute, requiring her declara-

tion, that she had willingly *executed* the same, and does not wish to retract it. The two phrases are connected by the copulative conjunction *and*, not by the disjunctive conjunction *or;* in the latter case they might have been construed as equivalent expressions, and the presence of the last construed as dispensing with the former. But the Legislature has expressly inserted them both; and both, or an *equivalent*, must be employed in a certificate to make the deed operative."

"*Signed*" is not equivalent to "*executed.*"

"*Execute.*" To complete; to make; to perform; to do; to follow out. The term is frequently used at law; as, 'to *execute* a deed,' which means to make a deed, including especially signing, *sealing*, and *delivery.*"

1 Bouv. Dic. 554.

Of the three essentials of the definition, two are wanting—the *sealing* and *delivery.* The clause in the certificate is in no sense an "equivalent" for the declaration required in the statute.

Neither evidence nor inferences, can be received to aid the certificate. In this case it appears that the deeds were willingly *signed*, but neither willingly *sealed* nor willingly *delivered.* The want of either fact, which want, is conclusively presumed from the silence of the certificate, is fatal to the deed.

The certificates to Exhibits "C" and "E" each fail to show that the privy examination, and subsequent acknowledgment, was in the county in which the Notary was authorized to act.

No principle is better settled than that the act of the officer, in taking the acknowledgment of a married woman, is a judicial act; and that the judgment of every special tribunal of the kind, must show upon its face, every matter necessaay to its jurisdiction.

Henderson v. Smith, 26 W. Va. 829.
Kempe v. Kennedy, 5 Cranch 187.
2 Wils. 382.
6 Mod. 224
9 Mod. 95.

The second question raised by the demurrer, was as to the plaintiff's right of dower, in the lands purchased by her husband, *Albert Laidley*, of *J. M. Pennybacker* and wife, but afterwards conveyed by them at his request to *C. P. Huntington*, and by him to the defendant company.

By reference to the deed from Huntington and wife, to the Central Land Company, R. p. 13, it will be seen that the lands de-

scribed in "Ex. D.," viz: 240 acres, conveyed by *Pennybacker* and wife to *Huntington*, had theretofore been sold to *Albert Laidley*, the plaintiff's husband; and by his request, the conveyance was made direct to *C. P. Huntington*. Laidley's purchase of the lands, notwithstanding the fact that the legal title was outstanding under the statutes of *West Virginia*, gave him such an estate as entitled his widow to dower therein.

Code of West Virginia, 1868, *ch.* 65.

SEC. 1. "A widow shall be endowed of one third of all the real estate whereof her husband, or any other to his use during coveture, was seized of an estate of inheritance, unless her right to such dower shall have been lawfully barred or relinquished."

See, also, *Rowton* v. *Rowton*, 1 H. & M. (Va.) 92.

The right of dower, attached as soon as the equitable estate vested in *Laidley* by reason of his purchase, and could not thereafter be divested, except in the mode prescribed by law.

The conveyance of the legal title, over *Laidley's* head, from his vendors to *Huntington*, could not defeat the right of dower already attached, especially when it appears from the recital of *Huntington's* deed to the company, that he had knowledge of *Laidley's* ownership before he bought the land. In his deed to the Company, he says, "his entire interest in a tract of land containing 240 acres purchased of J. M. Pennybacker and wife, by said *Laidley*, and conveyed by his direction to *C. P. Huntington*, the title to which said *Laidley* covenants to warrant and defend generally."

Huntington having bought this land of *Laidley*, with the full knowledge of her estate therein, could not by taking the legal title from *Laidley's* vendors, thereby defeat the right of dower already attached in favor of *Laidley's* wife.

The recital of the title, in the deed from *Huntington* to the *Land Co.*, fastens notices upon the Company of the fact, that *Laidley* had held an estate in the lands, of which his wife was dowable; and purchasing with full notice, the Company could be in no better situation, as regards the dower, than its vendor, *Huntington*. But it will be observed that *Huntington* only attempts to convey "*his interest* in this tract of land," and refers his grantee to *Laidley*, for the warranty of the title. This form of grant put the Company upon inquiry to ascertain the amount of the interest so conveyed.

The bill alleges that the plaintiff's husband, *Albert Laidley*, during coveture, was seized of an estate in this tract, of which she was dowable. The exhibit shows that *Huntington* purchased from her

husband, and that the *Land Co.* had full knowledge of that fact, and looked to *Laidley* to warrant the title.

The demurrer admits the bill. There is no pretense that the plaintiff was ever party to any paper professing to relinquish her right of dower in this tract. There certainly can be no question as to her right to assert and maintain her right of dower in this suit.

Whatever may be the decision of the Court upon the defectfve certificates, her right to maintain this suit for her dower in this tract, remained, and it was error to dismiss the bill.

SUMMARY.

I.

The cause should have been remanded.

1. The application was made *too late*. The cause having been "argued and submitted" before the petition was tendered.

2. There was no controversy in the cause between the petitioners for removal, and the plaintiff.

3. There was no separable controversy, to which the petitioners were parties.

II.

The demurrer should have been overruled.

1. The certificates to Exhibits A., B., C. and E. were each defective as to the plaintiff, and the deeds purporting to bar her dower were inoperative, and as toher void.

2. Plaintiff's husband, having been beneficially seized during coverture, of an estate of inheritance in the *Pennybacker* lands, the wife's dower attached, and could not be defeated by the conveyance over, from *Pennybacker* to *Huntington*. And the *Land Company* taking from Huntington with full knowledge of *Laidley's* former ownership, took subject to his wife's contingent right of dower therein.

For the foregoing reasons, it is respectfully submitted, that the decrees complained of, are erroneous and should be reversed.

Respectfully,

J. F. BROWN,
for Appellant.